

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANET REETZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 2:12-cv-12465

HON. MARIANNE O. BATTANI

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Janet Reetz filed her first appeal of the denial of her petition for social security disability benefits on May 6, 2010. Shortly thereafter, Defendant filed a motion to dismiss, asserting that Reetz failed to exhaust administrative remedies because her petition to the Appeals Council was untimely. The case was referred to Magistrate Judge Hluchaniuk in accordance with 28 U.S.C. § 636(b)(1). The Magistrate Judge recommended that this Court deny Defendant's motion to dismiss because Reetz claimed she was misled by the Social Security Administration as to the timeliness of her application. The Court adopted the recommendation and remanded the matter to the Appeals Council for review. Again, the Appeals Council denied Reetz's petition as untimely.

Subsequently, Reetz filed the instant action challenging the denial of her petition for benefits. Defendant then filed a motion to dismiss for failure to exhaust administrative remedies. In response, Reetz argues that the Court already rejected this defense when it adopted the previous R&R, thereby finding the exhaustion defense

waived by Defendant. On referral, Magistrate Judge Hluchaniuk issued a Report and Recommendation (“R&R”) recommending that Defendant’s motion to dismiss be denied because the Appeals Council could not reject Reetz’s petition based on untimeliness. (Doc. 16). The Magistrate Judge noted that “defendant failed to object to the findings set forth in the earlier [R&R] and should not be heard to complain about them now.” (Id. at 7).

In the R&R, the Magistrate Judge informed the parties that objections to the R&R must be filed within “14 days of service” and a “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (Id.) Neither party filed objections.

Because no objections were filed in this case, the parties waived their right to *de novo* review and appeal. Accordingly, the Court **ADOPTS** the Magistrate Judge’s R&R and **DENIES** Defendant’s motion to dismiss.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: August 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon all parties of record via the Court’s ECF Filing System.

s/Bernadette M. Thebolt
Case Manager